

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**David C. & Cheryl Kutscher/J. Russell & Julie K. Hixson,**

Petitioners-Appellants,

v.

**Warren County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-91-0287  
Parcel No. 64-025-10-0267**

On July 18, 2012, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board under Iowa Code sections 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants David C. and Cheryl Kutscher and J. Russell and Julie K. Hixson were represented by David Kutcher. County Attorney John Criswell is legal counsel for the Warren County Board of Review. The Board of Review did not participate at the hearing and chose to stand on the certified record. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

David C. and Cheryl Kutscher and J. Russell and Julie K. Hixson (Kutscher/Hixson), are owners of an agriculturally classified property located in Warren County. The site is legally described as the 10-77-25 Nor Cal W 1/2 NE-S of Creek. The parcel number for the subject site is 64-025-10-0267. It has no street address. The property was recently annexed from Linn township into the city of Norwalk. Kutscher/Hixson appeal from the Warren County Board of Review regarding their 2011 property assessment. The January 1, 2011, assessment is \$29,000.

According to the property record card, the subject site is 35.180 acres and is unimproved.

Kutscher/Hixson protested to the Board of Review asserting an error in the assessment under Iowa Code section 441.37(1)(c). On their appeal form they noted “the CSR rating does not consider if

the land can be productive due to water ways, wet spots, creek bed, etc. This parcel should not have a CSR rating.” The Board of Review denied the protest.

Kutscher/Hixon then appealed to this Board. In their appeal, Kutscher/Hixson further state “We seek to have this land valued as non-productive.”

The property record card identifies the subject parcel number as 64-025-10-0267 and includes the entire 35.180 acre property in this one parcel. According to notes on the property record card, and testimony from David Kutscher, we note the subject site was annexed from Linn Township into Norwalk in 2008 with a ten-year phase-in. The total assessed value to the subject site is \$29,000. In April 2011, Kutscher/Hixson received notice of their assessment. However, there were two notices for the subject site, each purportedly representing a portion of the total 35.180 acres. Both notices reflect the same legal description and “alternate parcel number,” which is 15000100267; but then the notices list a separate “parcel number.” One notice has a parcel number of 64-025-10-0267, and the second notice has a parcel number of 85-025-10-0267.

The notice of assessed value for parcel number 64-025-10-0267 was for \$18,900, representing 35.180 acres. The notice of assessed value for parcel number 85-025-10-0267 was for \$10,100 and 0.00 acres. The total for the two notices is \$29,000 and 35.180 acres.

A July 2012, letter from Warren County Assessor Brian Arnold stated “this particular parcel in Warren County is located in an annexed area of the City of Norwalk so the total assessed value is divided between two real estate parcels based on a predetermined annexation phase-in schedule.” Despite this statement by the assessor, we find no legal basis upon which an assessor may divide the subject parcel for property tax purposes and send separate assessment rolls assigning fictitious “sub-parcel” numbers to allocate assessed value between taxing jurisdictions. Moreover, this action would appear to be contrary to law. *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878 (Iowa 1989)

(finding an assessor may not subdivide historic legal descriptions of properties for purpose of separately assessing individual portions thereof); *see also* Iowa Code § 428.7.

Regarding Kutscher/Hixson's claim of error, they assert the subject site should not have any CSR rating because it is non-productive due to waterways, creek beds, and other similar land issues.

First, we note that all the agriculturally classed property is assessed based on productivity and net earning capacity.

Second, it seems that Kutcher/Hixson are misinterpreting the term "productivity." The term productivity is relevant because the subject site is classified as agricultural realty, which requires the assessment to be based on productivity and net earning capacity, not market value. Kutscher/Hixson did not provide an opinion as to what the correct value should be. They did not state what the CSR's should be nor did they provide any support for changing the CSR's. While the lay of the land may prohibit certain agricultural activity in areas of the subject site, the decision not to use the land for farming or other agricultural activity is ultimately a personal decision. Because Kutscher/Hixson raised concerns regarding waterways and other features, the Board of Review may want to consider checking the site for spot adjustments.

The Appeal Board finds there is insufficient evidence to support the claim that there are errors in the assessment of the subject parcel.

### ***Conclusions of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only



those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

The Kutscher/Hixons assert there is an error in their assessment under Iowa Code section 441.37(1)(d).


Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. In determining the productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Manual*, and to consider the results of a modern soil survey, if completed. Iowa Code § 441.21(1)(f); Iowa Administrative Code r. 701-71.3. Kutscher/Hixson's parcel carries an agricultural classification, which requires that it be valued using the prescribed productivity formula despite the fact that it is not actually producing an agricultural product. *See* Iowa Admin. Code r. 701-71.3, 701-71.12.

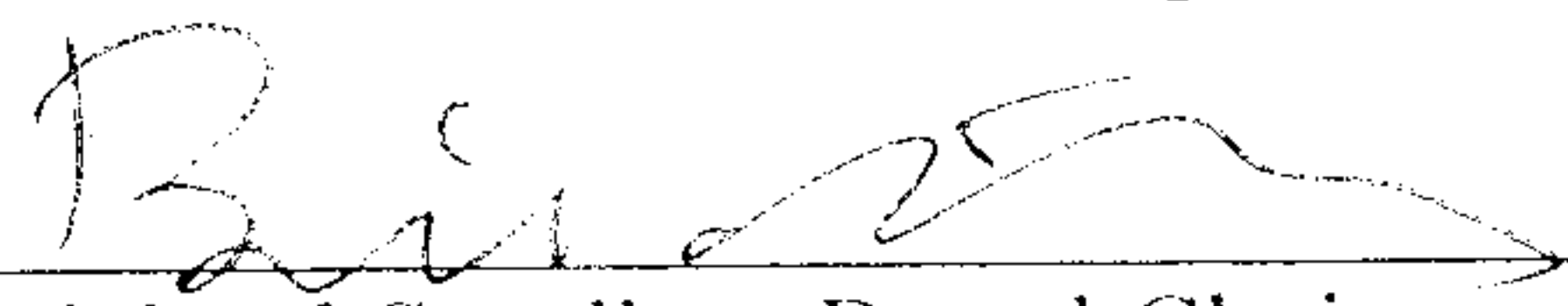
Kutscher/Hixson did not offer persuasive evidence to support the assertion that the CSR ratings are incorrect, although they do identify conditions such as creek wet spots and waterways, which may require spot adjustments.

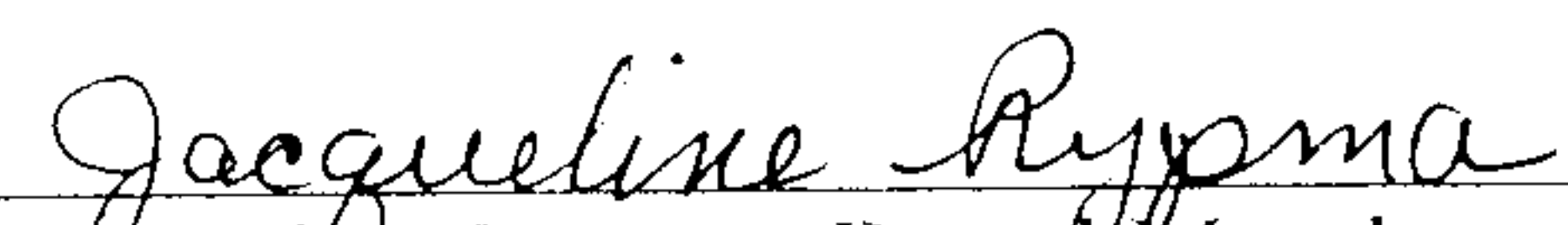
We find insufficient evidence has been presented to support the claim that the subject site has errors in the assessment.

THE APPEAL BOARD ORDERS the assessment of David C. and Cheryl Kutscher/J. Russell and Julie K. Hixson's property identified on the property record card as parcel number 64-025-10-0267, of \$29,000, as of January 1, 2011, set by the Warren County Board of Review, is affirmed.

Dated this 13 day of September, 2012.

  
Karen Oberman, Presiding Officer

  
Richard Stradley, Board Chair

  
Jacqueline Rypma, Board Member

Cc:

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REPRESENTATIVE FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>9-13</u> , 2012	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	